



VIA FOIA online

February 11, 2015

FOIA Officer, Region 10
U.S. Environmental Protection Agency
1200 6th Ave., Suite 900
Seattle, WA. 98101
Email: r10.foia@epa.gov
Phone: (206) 553-8665

Re: Freedom of Information Act request – Correspondence Red Dog Mine BACT Analysis for SCRs

Dear FOIA Officer:

On behalf of the Sierra Club, I am writing to request that the U.S. Environmental Protection Agency (EPA) provide copies of the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the EPA regulations at 40 C.F.R. § 2.100, *et seq.* This request is sent to you because you were identified as the proper person to receive such requests. If this request should be directed at another person, please forward this request to that person.

Sierra Club is the nation’s oldest grassroots organization. It has more than 2.4 million members and supporters nationwide and nearly 1,500 members in Alaska. Sierra Club is dedicated to the protection and preservation of the natural and human environment. Sierra Club’s purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

One of Sierra Club’s priority national conservation campaigns involves promoting smart energy solutions. Sierra Club is particularly interested in ensuring that coal mine and coal-fired power plants comply fully with all applicable statutes and regulations. This campaign organizes individuals regionally and nationwide to work on coal-related issues and educates the public on these issues, including the impacts of coal on air and water quality. This FOIA request is made as part of these campaigns.

Sierra Club Requests the Following Records:¹

1. All correspondence between EPA and the Alaska Department of Environmental Conservation (“ADEC”) on the BACT analysis for SCRs related to the Red Dog mine case;² and
2. Including copies of the following letters:³
 - a. Letter from Anita Frankel, Director, Office of Air Quality, United States Environmental Protection Agency, Region 10, to Tom Chapple, Alaska Department of Environmental Conservation (Sept. 28, 1999); and
 - b. Letter from Chuck Findley, Deputy Regional Administrator, United States Environmental Protection Agency, Region 10, to Michele Brown, Alaska Department of Environmental Conservation (Nov. 10, 1999); and
 - c. Letter from Chuck Findley, Deputy Regional Administrator, United States Environmental Protection Agency, Region 10, to Michele Brown, Alaska Department of Environmental Conservation (Dec. 10, 1999).

Exempt Records

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information for the Sierra Club to appeal the denial. To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Sierra Club at the address listed below.

¹ “Records” means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, telefaxes, e-mails, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records relating to the topics described below at any stage of development, whether proposed, draft, pending, interim, final or otherwise. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of EPA and all its Offices, Regions and other subdivisions.

² See *Alaska Dep't of Env'tl. Conservation v. E.P.A.*, U.S. No. 02-658 (cert. granted Feb. 24, 2003); see also *Alaska Dep't of Env'tl. Conservation v. E.P.A.*, 540 U.S. 461 (2004).

³ Joint Appendix, U.S. No. 02-658 (Apr. 25, 2003); see also *Alaska Dep't of Env'tl. Conservation v. E.P.A.*, 2003 WL 21523980 (U.S. 2003).

Fee Waiver Request

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). The Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.

The Sierra Club is a national, nonprofit, environmental organization with no commercial interest in obtaining the requested information. Instead, the Sierra Club intends to use the requested information to inform the public, so the public can meaningfully participate in evaluating EPA's operations and activities related to the evaluation of SCR and BACT analysis.

As explained below, this FOIA request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute – that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records must specifically concern identifiable “operations and activities of the government.”

The requested records relate to EPA's activities regarding the evaluation of SCR and BACT analysis at the Red Dog mine in Alaska. These activities are “identifiable operations or activities of the government.” The Department of Justice Freedom of Information Act Guide expressly concedes that “in most cases records possessed by a federal agency will meet this threshold” of identifiable operations or activities of the government. There can be no question that this is such a case.

2. The disclosure of the requested documents must have an informative value and be “likely to contribute to an understanding of Federal government operations or activities.”

The FOIA Guide makes it clear that, in the Department of Justice's view, the “likely to contribute” determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain. The requested records are “likely to contribute” to an understanding of your agency's decisions because they are not otherwise in the public domain and are not accessible other than through a FOIA request. This information will facilitate meaningful public participation in the decision-making process, therefore fulfilling the requirement that the documents requested be “meaningfully informative” and “likely to contribute” to an understanding of your agency's decision-making process with regard to the evaluation of SCR and BACT analysis at the Red Dog mine.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. Under this factor, the identity and qualifications of the requester—i.e., expertise in the subject area of the request and ability and intention to disseminate the information to the public—is examined.

The Sierra Club and its members have long-standing experience and expertise in the subject area of FOIA requests, specifically, issues related to the Clean Air Act, the development and use of energy resources and protection of endangered species. One of Sierra Club's priority national conservation campaigns involves promoting smart energy solutions. Sierra Club is particularly interested in ensuring that coal mines and coal facilities comply fully with all applicable statutes and regulations.

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, including, but not limited to: analysis and distribution to the media, distribution through publication and mailing, posting on the Club's website, emailing and list serve distribution to our members in Alaska and across the U.S., and via public meetings and events. Every year the Sierra Club website receives 40,730 unique visits and 100,381 page views; on average, the site gets 104 visits per day. Sierra Magazine, which is a quarterly magazine published by the Sierra Club, has a circulation of approximately 1,000,000. Sierra Club Insider, an electronic newsletter, is sent to over 850,000 people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system. In the past, the Sierra Club has published, posted, and disseminated numerous stories on coal and coal power plants regarding their impacts on health, the environment and alternative energy. This includes information on our various webpages, such as our [Beyond Coal Campaign](#) portal, our [Clean Energies Solutions](#) portal and our press releases.⁴

Sierra Club intends to share the information received from this FOIA request with our impacted members in Alaska, our experts, the media and our allies who share a common interest in the application and evaluation of SCR and BACT analysis on coal mines and coal plants.

Sierra Club unquestionably has the "specialized knowledge" and "ability and intention" to disseminate the information requested in the broad manner outlined above, and to do so in a manner that contributes to the understanding of the "public-at-large."

4. The disclosure must contribute "significantly" to public understanding of government operations or activities. The public's understanding must be likely to be enhanced by the disclosure to a significant extent.

The records requested will contribute to the public understanding of the government's role, or their "operations and activities" associated with the evaluation of SCR and BACT

⁴ For example, the Sierra Club sought information about coal export and permitting activities in Oregon via a state public records act request at the Port of Coos Bay. All correspondence is published online and has received extensive media attention from press releases on the subject. See <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon>.

analysis at the Red Dog mine. The disclosure of the requested records is essential to the public's understanding of EPA's operations and activities. After disclosure of these records, the public understanding of EPA's determinations will be significantly enhanced. The requirement that disclosure must contribute "significantly" to the public understanding is therefore met.

5. Whether the requester has a commercial interest that would be furthered by the requested disclosure.

The Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that "further a commercial, trade, or profit interest" as those terms are commonly understood. The Sierra Club is a tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of the Sierra Club's mission to inform the public on matters of vital importance to the environment and public health.

6. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

When a commercial interest is found to exist and that interest would be furthered by the requested disclosure, an agency must assess the magnitude of such interest in order to compare it to the "public interest" in disclosure. If no commercial interest exists, an assessment of that non-existent interest is not required.

As noted above, the Sierra Club has no commercial interest in the requested records. Disclosure of this information is not "primarily" in the Sierra Club's commercial interest. On the other hand, it is clear that the disclosure of the information requested is in the public interest. It will contribute significantly to public understanding of EPA's determinations and activities regarding the evaluation of SCR and BACT analysis at the Red Dog mine.

The Sierra Club respectfully requests, because the public will be the primary beneficiary of this requested information, that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A). In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

Record Delivery

In responding to this request, please comply with all relevant deadlines and other obligations set forth in FOIA and the agency's regulations. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104. Please produce the records above by sending them to me at the address listed below. Please produce them on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

If possible, please send all documents in PDF format via electronic mail, external

website, or on CD or DVD via traditional mail. Alternatively, paper copies are acceptable, but electronic format is preferred. Please send all requested records as soon as possible to:

David Abell
david.abell@sierraclub.org

- or -

Sierra Club Environmental Law Program
85 Second Street, 2nd Floor
San Francisco, CA 94105

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at 415.977.5764 or by e-mail at david.abell@sierraclub.org.



David Abell
Sierra Club Environmental Law Program
85 Second Street, 2nd Floor
San Francisco, CA 94105